



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

**MAY 23 1995**

Mr. John D. Dunlap III  
Chairman, California Air Resources Board  
California Environmental Protection Agency  
2020 L Street  
Sacramento, California 95814

Dear Mr. Dunlap:

This is in response to your letter of March 30, 1995 containing recommendations from the California Air Resources Board (CARB) that you believe would assist in maximizing the effectiveness of the Federal air toxics program in California. Specific recommendations include allowing flexibility in approving State programs under section 112(1) and in the format of maximum achievable control technology (MACT) standards.

We understand the concerns you raise and, in general, agree with many of the solutions you offer. Currently, efforts are underway with representatives of State and local agencies from across the country, including some members of the CARB, to address many of your specific concerns. We were familiarized with some of these concerns by Dan Donohue of the CARB during the Brown Summit workshop held in April. We strongly support your overall recommendation that the Environmental Protection Agency (EPA) work together with State and local agencies to develop options that allow for a high degree of flexibility, while at the same time keeping the goal of meeting our environmental objectives first and foremost.

Listed below are our initial reactions to the issues and recommendations you have raised.

**Recommendation 1** - Amend part 63, subpart E, entitled Approval of State Programs and Delegation of Federal Authorities, to provide for a more comprehensive program approval that includes the provisions of a Federal audit to ensure adequate State performance.

**Response:** The EPA is interested in exploring ways to provide more flexibility for States through the use of section 112(1). Your suggestions will be carefully considered as EPA determines whether to amend the part 63, subpart E rule, and if it is amended, the extent of flexibility that would be granted in making equivalency determinations.

**Recommendation 2** - Substantially reduce the recordkeeping and reporting requirements in the promulgation of MACT emission standards.

**Response:** We agree that the levels of recordkeeping and reporting requirements should be reviewed in light of the following considerations: (1) why the specific records are being kept; (2) what is necessary to report in order to assure that the MACT standard is being sustained. We are undertaking a complete review of our recordkeeping and reporting requirements as a part of our regulatory review initiative to investigate and address potentially burdensome requirements. As a result of this review, we expect the recordkeeping and reporting requirements to be modified to allow more flexibility. Appropriately applied monitoring, recordkeeping and reporting assure initial and long-term conformity to the MACT requirement. Such requirements are integral to the MACT and serve the industry, the Agency and the public by providing the assurance that the reduction in toxic emissions has been achieved and maintained. We are willing to work with the CARB to explore the specific alternatives being proposed.

**Recommendation 3:** Provide clear policy guidance that the US EPA should place a strong emphasis on approving State rules which achieve equivalent public health benefits.

**Response:** The EPA is currently preparing a policy to address equivalency of State rules (e.g., the California dry cleaner rule) under section 63.93 of the subpart E rule. We expect this policy to be issued within the next month. Also, changing the subpart E rule may be required if additional flexibility is warranted.

**Recommendation 4:** In drafting MACT standards, recognize and specify alternatives that are federally enforceable.

**Response:** The form of the standard is developed based on information gathered from participants and interested parties during the MACT development process. We agree that in certain cases, other forms of MACT can exist as equivalent alternatives to the chosen MACT and, we encourage your staff to submit documented equivalent alternatives during the MACT development process for the record. In subsequent MACT delegation requests, for example, the alternative equivalent to MACT, as documented and as part of the docket, would provide a basis for a more expeditious review and approval of an alternative form of the standard. In addition, we are considering how we can draft MACT standards to allow quicker and more certain equivalency determinations through subpart E. Having the information on an alternative in the Air Docket would help us in approving equivalent alternative MACT standards.

**Recommendation 5:** Establish a mechanism within the MACT standards that allow States a reasonable time to seek section 112(1) authority to substitute a State rule.

**Response:** Currently, the MACT standards require some early notifications by the affected sources upon promulgation. The affected source usually has 12 to 36 months after the date of promulgation to meet the substantial compliance requirements. Where State and Federal standards overlap, EPA agrees to explore the option you present to minimize rule applicability confusion, dual regulation of affected sources, and ensure timely compliance of the source with MACT requirements.

**Recommendation 6:** Part 63, subpart E, entitled Approval of State Programs and Delegation of Federal Authorities, to revise the provisions that all required monitoring or testing must be reported at least every 6 months (section 63.93(b)(4)(iv)).

**Response:** The EPA agrees that the part 63, subpart E rule may not be the appropriate location for this requirement and may cause additional burden on those rules that are submitted for approval. Consequently, EPA intends to propose to modify or delete this provision from the part 63, subpart E rule.

**Recommendation 7:** Continue to ensure that State and local agencies have adequate input into development of both the technical and policy positions.

**Response:** In particular, there is concern that certain timeframes may be unrealistic for State and local agency representatives to provide input on key technical or policy positions. We understand your concern regarding tight schedules, and will work to ensure adequate and advanced notice regarding State and local agency input. Unfortunately, many of our standards have been on court ordered deadlines which result in short review times for draft rules, not only for State and local agencies, but also for EPA management. We strongly support State and local agency involvement and will continue to strive to seek input and to incorporate a reasonable period of time to receive input from all parties with regard to policy and technical positions through our rule development work groups, public notice and comment periods, and other forums for State and local agencies to discuss their thoughts and concerns. An important opportunity for State and local agencies is the Presumptive, Adopt-, and Share-A-MACT programs which have been endorsed by both the Director of the Office of Air Quality Planning and Standards (OAQPS) and the Committee Chairman of the STAPPA/ALAPCO Toxics Committee (see enclosure). These efforts rely heavily on State and local involvement in MACT development. The Adopt-A-

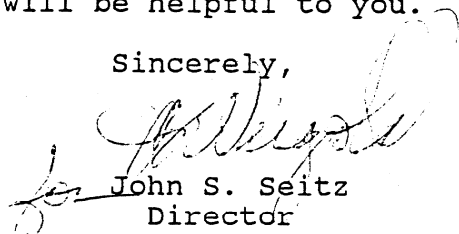
MACT program, in particular, allows the State (except for the inherently Federal responsibilities) to develop the MACT rule with other States. If you are interested in participating in these programs, your Agency should contact one of the persons listed below for more information regarding these opportunities.

Overall, the EPA agrees that the State of California has developed a strong air toxics program. We applaud your efforts, and welcome your thoughts and ideas regarding implementation of the Federal air toxics program.

If you have any questions on the section 112(l) issues discussed, please have your staff contact Sheila Q. Milliken, OAQPS, at 919-541-2625. For questions regarding MACT issues, my staff contact is Tony Wayne, OAQPS, at 919-541-5439.

I appreciate this opportunity to be of service and trust that this information will be helpful to you.

Sincerely,



John S. Seitz  
Director  
Office of Air Quality Planning  
and Standards

Enclosure

cc: Bob Kellam (MD-12)  
Bruce Jordan (MD-13)  
Regional Air Directors



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

1/27/95

Mr. Donald F. Theiler, Director  
Bureau of Air Management  
Post Office Box 7921  
Madison, Wisconsin 53707

Dear Mr. Theiler:

It is my pleasure to transmit the following agreement to you and request that you join with me in promoting partnerships in the national emission standards rulemaking process for hazardous air pollutants (NESHAP/Maximum Achievable Control Technology). Our joint signing should send a message that our organizations see the long-term benefit of working closely together. The statement also recognizes the growing leadership role of State and local governments in Federal activities through these partnerships. In addition, the promotion of this statement opens the door wider to discussions of future support in developing and operating an integrated toxic pollutant rulemaking program.

Please join me in this statement of support. I will ensure that it is presented as a significant effort in OAQPS.

Sincerely,

A handwritten signature in dark ink, appearing to read "John S. Seitz".

John S. Seitz  
Director

Office of Air Quality Planning  
and Standards

cc: Mary Nichols (1101)  
Dick Wilson (1102)  
Audrey O'Brien, Washington  
Tad Aburn, Maryland  
John Heinrich, Wisconsin  
Robert Todd, Texas  
Mary Douglas, STAPPA/ALAPCO

The Clean Air Act of 1990 requires the U.S. Environmental Protection Agency to develop national emission standards for hazardous air pollutants (NESHAP/Maximum Achievable Control Technology) for a number of source categories. In developing these NESHAP, the Emission Standards Division of the Office of Air Quality Planning and Standards has worked closely with State and local agencies interested in the development of these standards.

The Environmental Protection Agency Office of Air Quality Planning and Standards and State/local agencies have been successful in developing and demonstrating Maximum Achievable Control Technology (MACT) partnerships. In fostering future success, the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials join with OAQPS in formally kicking off the partnership program. The following statement recognizes the partnership efforts over the last year as well as indicating program direction and desire to foster future partnerships.

The State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials and the Office of Air Quality Planning and Standards agree to foster and expand partnerships in the NESHAP/MACT development process.

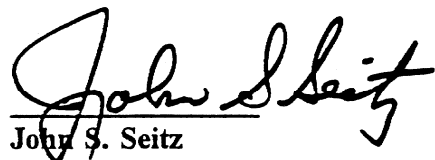
By our signatures, we look forward to greater integration and future support to these MACT partnerships.



Donald F. Theiler  
Director  
Wisconsin Bureau of Air  
Management



Robert H. Colby  
Director  
Chattanooga/Hamilton County  
Air Pollution Control Bureau  
Chattanooga, Tennessee



John S. Seitz  
Director  
Office of Air Quality Planning  
and Standards  
U.S. Environmental Protection  
Agency



S. William Becker  
Executive Director  
State and Territorial Air Pollution  
Program Administrators and the  
Association of Local Air Pollution  
Control Officials